

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 201808533	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 08/14/2018 11:44 PM	Location of Incident: Hubert Street/Collister Street, 1st Precinct stationhouse, § 87(2)(b)	Precinct: 01	18 Mo. SOL 2/14/2020	EO SOL 2/14/2020	
Date/Time CV Reported Mon, 10/15/2018 1:31 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 10/15/2018 1:31 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Habermehl	10461	949073	001 PCT
2. SGT Abraham Caraballo	03921	939972	001 PCT
3. POM Dennis Burgos	25416	949929	001 PCT
4. POM Hugh Herbert	01343	930337	001 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Abraham Caraballo	Abuse: At Hubert Street and Collister Street in Manhattan, Sergeant Abraham Caraballo stopped § 87(2)(b)	
B.POM James Habermehl	Abuse: At Hubert Street and Collister Street in Manhattan, Police Officer James Habermehl stopped § 87(2)(b)	
C.POM Hugh Herbert	Force: At Hubert Street and Collister Street in Manhattan, Police Officer Hugh Herbert used physical force against § 87(2)(b)	
D.POM Dennis Burgos	Force: At Hubert Street and Collister Street in Manhattan, Police Officer Dennis Burgos used physical force against § 87(2)(b)	
E.POM Dennis Burgos	Abuse: At Hubert Street and Collister Street in Manhattan, Police Officer Dennis Burgos threatened § 87(2)(b) with the use of force.	
F.POM Dennis Burgos	Force: At the 1st Precinct stationhouse, Police Officer Dennis Burgos used physical force against § 87(2)(b)	
G.POM Dennis Burgos	Discourtesy: At the 1st Precinct stationhouse, Police Officer Dennis Burgos spoke discourteously to § 87(2)(b)	
H.POM Dennis Burgos	Discourtesy: Outside § 87(2)(b), Police Officer Dennis Burgos spoke discourteously to § 87(2)(b)	

Case Summary

On October 15, 2018, § 87(2)(b) filed this complaint with the CCRB by phone.

On August 14, 2018, at approximately 11:44 p.m., § 87(2)(b) was walking near Hubert Street and Collister Street in Manhattan. § 87(2)(b) was stopped by Sgt. Abraham Caraballo and PO James Habermehl of the 1st Precinct (**Allegations A-B: Abuse of Authority**, § 87(2)(g) PO Dennis Burgos and PO Hugh Herbert, also of the 1st Precinct, allegedly squeezed § 87(2)(b)'s testicles (**Allegations C-D: Force**, § 87(2)(g) PO Herbert allegedly threatened § 87(2)(b) with the use of force (**Allegation E: Abuse of Authority**, § 87(2)(g) § 87(2)(b) was transported to the 1st Precinct stationhouse to be processed for a summons. At the 1st Precinct stationhouse, PO Burgos allegedly yanked § 87(2)(b)'s arms upwards behind his back while he was rear handcuffed (**Allegation F: Force**, § 87(2)(g) PO Burgos allegedly spoke discourteously to § 87(2)(b) (**Allegation G: Discourtesy**, § 87(2)(g) PO Burgos allegedly hit § 87(2)(b) in the groin repeatedly (**subsumed under Allegation F**). § 87(2)(b) went to § 87(2)(b) after he was released from police custody and encountered PO Herbert and PO Burgos. PO Burgos allegedly told § 87(2)(b) "You better get the fuck out of here" (**Allegation H: Discourtesy**, § 87(2)(g)

Body worn camera of the incident was obtained. The original footage can be found in IAs #38, #81, #83 and #84 and the summary of the footage can be found in IA #86 (BR01-04, 11).

§ 87(2)(b) received a summons for littering. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

A referral was made to IAB and to the Manhattan District Attorney's Office § 87(2)(b), § 87(2)(g)

Findings and Recommendations

Allegation A – Abuse of Authority: At Hubert Street and Collister Street in Manhattan, Sergeant Abraham Caraballo stopped § 87(2)(b)

Allegation B – Abuse of Authority: At Hubert Street and Collister Street in Manhattan, Police Officer James Habermehl stopped § 87(2)(b)

§ 87(2)(b) testified that he was walking and was nearly struck by a vehicle (BR05). § 87(2)(b) and the female driver of the vehicle cursed at each other. § 87(2)(b) spit on the floor and walked away. § 87(2)(b) turned back and saw the driver had hailed police officers. When § 87(2)(b) saw the police vehicle next to the female, § 87(2)(b) panicked because he remembered he had someone else's ID in his pocket. § 87(2)(b) threw the ID and his wallet onto the ground. During his CCRB interview, § 87(2)(b) explained that earlier in the evening, he found a backpack in a park with an ID inside. § 87(2)(b) took the ID because he intended to place it in a mailbox to be returned to the owner. Sgt. Caraballo and PO Habermehl pulled up behind § 87(2)(b) after he had thrown the ID onto the sidewalk and told him to sit on the ground. § 87(2)(b) complied. Sgt. Caraballo told § 87(2)(b) "You're not under

arrest. We're going to give you a ticket for harassment." Sgt. Caraballo asked § 87(2)(b) for his ID. § 87(2)(b) told Sgt. Caraballo he thought it was in the items he threw. Sgt. Caraballo looked at the items § 87(2)(b) threw onto the ground, but could not find the ID. Sgt. Caraballo told § 87(2)(b) that they had to bring him to the stationhouse to figure out why he had someone else's ID.

Sgt. Caraballo testified that he and PO Habermehl were flagged down by a female civilian (BR06). The female pointed at § 87(2)(b) who was running down the street, and said that § 87(2)(b) spit in her face and on her car. Sgt. Caraballo and PO Habermehl followed § 87(2)(b) intending to ask him about his encounter with the female. Sgt. Caraballo explained that he did not have any authority to summons or arrest § 87(2)(b) because the reported offense was a violation which did not occur in his presence. After turning a corner, Sgt. Caraballo saw § 87(2)(b) tossing a number of indeterminate objects from his pockets onto the sidewalk which constituted littering. The manner in which § 87(2)(b) ran away from the location of the female driver and was discarding items onto the street raised Sgt. Caraballo's suspicion. Sgt. Caraballo approached § 87(2)(b) and noticed the items on the sidewalk were IDs and credit cards. § 87(2)(b) provided his name to Sgt. Caraballo. The name and photo on the IDs did not match § 87(2)(b). Sgt. Caraballo asked § 87(2)(b) if he had ID. § 87(2)(b) did not know where his ID was amongst the items he had thrown to the sidewalk. Sgt. Caraballo determined that § 87(2)(b) would receive a littering summons. Since § 87(2)(b) could not provide his ID, he needed to be processed at the stationhouse to verify his identity. In addition, further investigation needed to be done to determine if the IDs and credit cards were reported stolen because this would determine whether § 87(2)(b) might face additional charges for possession of stolen property.

Body worn camera video from PO Habermehl's camera depicts an encounter that is consistent with Sgt. Caraballo's account of the incident (BR01, BR11). At the start of the encounter at the 23:38:30 hardcoded timestamp, § 87(2)(b) is ordered to sit on the sidewalk. Scattered around § 87(2)(b) on the sidewalk are several pieces of paper, plastic bags and other small indeterminate items. In addition to the aforementioned IDs and credit cards, at the 23:46:09 hardcoded timestamp, § 87(2)(b) was found to have thrown keys onto the sidewalk which he said did not belong to him.

Littering, sweeping, throwing, or casting any material such as ashes, garbage, paper, dust, or other refuse or rubbish into or upon any street or public place is illegal. New York City Administrative Code, §16-118(1) (BR07).

When a defendant makes a conscious calculated choice reflective of a strategy to relieve himself of property, the defendant's choice serves to dissipate any taint of unlawful police conduct. People v. Atwater, 12 A.D.3d 333 (2004) (BR08).

It is undisputed that § 87(2)(b) littered items onto the sidewalk. According to § 87(2)(b)'s testimony, § 87(2)(b) discarded the items in his pocket in response to his own anxiety about possessing them, rather than in response to any action that had been taken by the officers. § 87(2)(g)

§ 87(2)(g)

Allegation C - Abuse of Authority: At Hubert Street and Collister Street in Manhattan, Police Officer Hugh Herbert used physical force against § 87(2)(b)

Allegation D – Abuse of Authority: At Hubert Street and Collister Street in Manhattan, Police Officer Dennis Burgos used physical force against § 87(2)(b)

Allegation E – Abuse of Authority: At Hubert Street and Collister Street in Manhattan, Police Officer Dennis Burgos threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that PO Herbert and PO Burgos arrived on scene after he was told he was going to be taken to the stationhouse. PO Habermehl and Sgt. Caraballo were about to place § 87(2)(b) in their vehicle when another officer screamed, “Wait.” PO Burgos and PO Herbert approached § 87(2)(b). PO Habermehl said, “Do you guys want to have a little fun with him?” PO Herbert and PO Burgos both grabbed § 87(2)(b)’s testicles over his clothing and squeezed § 87(2)(b)’s testicles which caused him pain. Sgt. Caraballo and PO Habermehl laughed at § 87(2)(b) as this occurred. § 87(2)(b) shifted his hips and groin away from the officers due to pain and discomfort. PO Herbert said, “Let us do this the way we’re gonna do it or you’re getting slammed against the wall. If you don’t let us do this, I’m going to crack your head against the wall right now.” § 87(2)(b) was placed in the back of a police vehicle and was taken to the stationhouse.

§ 87(2)(b) went to § 87(2)(b) the same night of the incident. The medical records pertaining to this treatment were obtained by the investigation and reflect that § 87(2)(b) told medical personnel he was having an anxiety attack § 87(2)(b). No report of pain or injury are noted and no allegations of force are noted in these records. § 87(2)(b) was evaluated and released from the psychiatric care unit.

Body worn camera footage from PO Habermehl’s camera shows that PO Herbert and PO Burgos arrived on scene to transport § 87(2)(b) to the stationhouse (BR10-11). PO Burgos frisked and searched § 87(2)(b)’s person before placing him in the police vehicle. All of PO Burgos’ hand motions cannot be seen, though they are primarily focused at § 87(2)(b)’s waist, including removing assorted items from his pant pockets. § 87(2)(b) tenses and moves toward the police vehicle while he is being frisked. PO Burgos says, “Relax or I’ll put you against the wall.” No officer tells § 87(2)(b) that they will slam him against the wall, crack his head against the wall, or makes any other threat toward § 87(2)(b). PO Herbert’s physical contact with § 87(2)(b) is limited to placing his hand on § 87(2)(b)’s chest while PO Burgos is frisking him. No officer says, “Do you want to have a little fun with him?” No officer laughs at § 87(2)(b).

§ 87(2)(b) alleged that PO Herbert threatened him with physical force. § 87(2)(g)

PO Burgos testified that he told § 87(2)(b) he would put him against the wall because § 87(2)(b) was shifting his body away from PO Burgos. PO Burgos needed to frisk and search

§ 87(2)(b) because he had a number of large bulges on his person which needed to be checked, including one which turned out to be a large rock. PO Burgos warned § 87(2)(b) because he wanted him to stop moving while he was being frisked.

PO Burgos, PO Herbert, and Sgt. Caraballo denied that anyone squeezed § 87(2)(b)'s testicles, and denied that anyone threatened § 87(2)(b) in the manner alleged (BR12-13).

§ 87(2)(g)
[REDACTED]

[REDACTED]

[REDACTED]

Allegation F – Force: At the 1st Precinct stationhouse, Police Officer Dennis Burgos used physical force against § 87(2)(b)

Allegation G – Discourtesy: At the 1st Precinct stationhouse, Police Officer Dennis Burgos spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that he was escorted into the stationhouse and was passed off to PO Burgos while still rear-cuffed. PO Burgos placed his hands under § 87(2)(b)'s wrists and yanked § 87(2)(b)'s arms upwards. § 87(2)(b) asked PO Burgos why he did that. PO Burgos said, "I'll do whatever the fuck I want to do to you." PO Burgos stood behind § 87(2)(b)

§ 87(2)(b) placed his hand between § 87(2)(b)'s legs, and swung upwards in a chopping motion three times in rapid succession, striking § 87(2)(b) in the groin. § 87(2)(b) believed that his prostate ruptured from the impact which caused him to become dizzy and disoriented. § 87(2)(b) was ultimately released from the stationhouse with a summons for littering.

§ 87(2)(b) said he went to various medical facilities in the months after the incident. As described in the previous section, § 87(2)(b) went to § 87(2)(b) the same night after he was released from police custody. During this visit, § 87(2)(b) told medical personnel he was having an anxiety attack § 87(2)(b). The records do not reveal any allegation that force was used against § 87(2)(b) or any complaint of physical pain. Starting with treatment he received on § 87(2)(b), at § 87(2)(b), nearly a month and a half after the incident, § 87(2)(b) reported urinary problems as a result of having been assaulted by police officers (BR14-15). § 87(2)(b) was diagnosed with an unspecified urinary disorder.

Body worn camera video from PO Burgos' camera shows that PO Burgos escorted § 87(2)(b) into the stationhouse and brought him in front of the front desk (BR16). PO Burgos patted down § 87(2)(b). PO Burgos did not use any profanity toward § 87(2)(b) did not strike § 87(2)(b) in the groin, and did not use any force against him.

§ 87(2)(g)

Allegation H – Discourtesy: Outside § 87(2)(b),
Police Officer Dennis Burgos spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that he went to § 87(2)(b) after he was released from police custody. § 87(2)(b) saw PO Burgos and PO Herbert sitting in a police car in front of the hospital. § 87(2)(b) approached the car, asked PO Burgos for his name, and was provided this information. § 87(2)(b) asked PO Burgos for his partner's name. PO Burgos said, "Gelman. You better get the fuck out of here." § 87(2)(b) turned and walked away toward the hospital.

PO Burgos' body worn camera captured a portion of the incident outside of the hospital (BR04). While seated in the front passenger seat of his police vehicle, PO Burgos is approached by § 87(2)(b) is beside the passenger side window for about 20 seconds before the audio begins and PO Burgos exits his vehicle. § 87(2)(b) tells PO Burgos that he is having a panic attack. PO Burgos directs § 87(2)(b) to the hospital right behind him. § 87(2)(b) says, "Okay," and walks away. The entire recording is 43 seconds long.

PO Burgos and PO Herbert testified that they were seated in their police vehicle outside of the hospital while working on an unrelated job. § 87(2)(b) approached the police vehicle and asked PO Burgos for the time, which PO Burgos provided. Both officers denied that anyone told

§ 87(2)(b) to, “Get the fuck out of here.” Both officers denied that any officer used any profanity toward § 87(2)(b)

PO Burgos testified that he got out of his police vehicle because § 87(2)(b) reached toward his waist which made him fearful for his safety. § 87(2)(b) asked where the hospital was. PO Burgos pointed behind him. § 87(2)(b) left.

PO Herbert testified that after PO Burgos provided § 87(2)(b) the time, § 87(2)(b) made “disparaging remarks” toward PO Burgos. PO Herbert did not remember what these remarks were or their general substance. PO Burgos and PO Herbert ordered § 87(2)(b) to leave, but PO Herbert did not remember how this was phrased to him. § 87(2)(b) continued making disparaging remarks toward PO Burgos. PO Burgos and PO Herbert exited the police vehicle which prompted § 87(2)(b) to walk away.

§ 87(2)(g)
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Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
 - § 87(2)(b)
- Sgt. Caraballo has been a member of the service for 13 years and has been a subject in two prior CCRB complaints involving three allegations, § 87(2)(g)
 - PO Habermehl has been a member of the service for eight years and has been a subject in one prior CCRB complaint involving one allegation which was not substantiated § 87(2)(g)
 - PO Burgos has been a member of the service for seven years and has been a subject in four prior CCRB complaints involving 12 allegations, four of which were substantiated.
 - 201507511 involved a substantiated arrest allegation against PO Burgos for which the Board recommended Formalized Training and the NYPD enforced Formalized Training.
 - 201809012 involved two substantiated discourtesy allegations and one substantiated use of a Taser allegation against PO Burgos for which the Board recommended Formalized Training. The NYPD has not yet imposed discipline.
 - PO Herbert has been a member of the service for 16 years and has been a subject in 15 prior CCRB complaints involving 38 allegations, three of which were substantiated.

- 201809012 involved substantiated pepper spray, physical force, and discourtesy allegations against PO Herbert for which the Board recommended Formalized Training. The NYPD has not yet imposed discipline.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of April 26, 2019, the NYC Office of the Comptroller has no record of a Notice of Claim having been filed regarding this incident (BR18).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Squad No.: 13

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date